

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

RACHEL C. B.,

Plaintiff,

V.

**COMMISSIONER OF SOCIAL SECURITY,**

Defendant.

Case No. C23-1156-SKV

## ORDER REVERSING THE COMMISSIONER'S DECISION

Plaintiff seeks review of the denial of her application for Supplemental Security Income (SSI) and Disability Insurance Benefits (DIB). Having considered the ALJ's decision, the administrative record (AR), and all memoranda of record, the Court **REVERSES** the Commissioner's final decision and **REMANDS** the matter for an award of benefits.

## BACKGROUND

Plaintiff was born in 1971, has a high school education, and most recently worked as a graphic designer and photo editor. AR 953. Plaintiff was last gainfully employed in 2019. AR 951.

In November 2016, Plaintiff applied for benefits, alleging disability as of August 23, 2016. AR 70-88. Plaintiff's applications were denied initially and on reconsideration, and Plaintiff requested a hearing. AR 1014-25. After the ALJ conducted a hearing in May 2019, the

1 ALJ issued a decision finding Plaintiff not disabled. AR 958-82. The Appeals Council denied  
 2 Plaintiff's request for review, making the ALJ's decision the Commissioner's final decision.  
 3 AR 983. Plaintiff appealed the final decision of the Commissioner, and on August 26, 2021, this  
 4 Court reversed the ALJ's decision and remanded the case for reconsideration of the medical  
 5 opinions. AR 989. On remand, Plaintiff amended her alleged onset date of disability to  
 6 November 13, 2019. AR 908. In turn, after a different ALJ conducted a second hearing on  
 7 March 16, 2023, the second ALJ issued a decision finding Plaintiff not disabled. AR 905-39.  
 8 Plaintiff appealed the final decision of the Commissioner to this Court. Dkt. 1. The parties  
 9 consented to proceed before the undersigned Magistrate Judge. Dkt. 3.

10 **THE ALJ'S DECISION**

11 Utilizing the five-step disability evaluation process,<sup>1</sup> the ALJ found:

12 **Step one:** Plaintiff has not engaged in substantial gainful activity since November 13,  
 13 2019, the amended alleged onset date.

14 **Step two:** Plaintiff has the following severe impairments: hypothyroidism status post  
 15 thyroid cancer surgery; neuropathy; cervical and lumbar degenerative disk disease;  
 16 obesity; and depressive disorder.

17 **Step three:** These impairments do not meet or equal the requirements of a listed  
 18 impairment.<sup>2</sup>

19 **Residual Functional Capacity:** Plaintiff can perform light work except she cannot  
 20 climb ladders, ropes, or scaffolds. She can understand, remember, and carry out simple,  
 21 work-related instructions in a predictable, routine work setting. She can reach overhead  
 22 only occasionally.

23 **Step four:** Plaintiff cannot perform past relevant work.

24 **Step five:** As there are jobs that exist in significant numbers in the national economy that  
 25 Plaintiff can perform, Plaintiff is not disabled.

26 AR 911-12, 915, 926-27.

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<sup>1</sup> 20 C.F.R. §§ 404.1520, 416.920.

<sup>2</sup> 20 C.F.R. Part 404, Subpart P., App. 1.

## LEGAL STANDARDS

Under 42 U.S.C. § 405(g), this Court may set aside the Commissioner’s denial of social security benefits when the ALJ’s findings are based on harmful legal error or not supported by substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 (9th Cir. 2005). As a general principle, an ALJ’s error may be deemed harmless where it is “inconsequential to the ultimate nondisability determination.” *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012) (citation omitted). The Court looks to “the record as a whole to determine whether the error alters the outcome of the case.” *Id.*

Substantial evidence is “more than a mere scintilla. It means - and means only - such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Biestek v. Berryhill*, 139 S. Ct. 1148, 1154 (2019) (cleaned up); *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th Cir. 1989). The ALJ is responsible for evaluating symptom testimony, resolving conflicts in medical testimony, and resolving any other ambiguities that might exist. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). While the Court is required to examine the record as a whole, it may neither reweigh the evidence nor substitute its judgment for that of the Commissioner. *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). When the evidence is susceptible to more than one rational interpretation, it is the Commissioner’s conclusion that must be upheld. *Id.*

## DISCUSSION

Plaintiff argues the ALJ erred in step two findings, misevaluated three medical opinions, and erred in assessing Plaintiff's residual functional capacity (RFC). The Commissioner argues the ALJ's decision is free of harmful legal error, supported by substantial evidence, and should be affirmed.

1                   **A. The ALJ Erred at Step Two**

2                   Plaintiff contends the ALJ misevaluated her postural orthostatic tachycardia syndrome  
 3 (POTS), chronic fatigue, and fibromyalgia impairments at step two. Dkt. 8 at 4-5. The  
 4 Commissioner argues the law of the case doctrine precludes Plaintiff's argument. Dkt. 10 at 3.  
 5 “[T]he law of the case doctrine generally prohibits the court from considering an issue that has  
 6 already been decided by that same court or a higher court in the same case.” *Stacy v. Colvin*, 825  
 7 F.3d 563, 567 (9th Cir. 2016). The Ninth Circuit has held that this doctrine applies to Social  
 8 Security administrative remands from a federal district court in the same way they would apply  
 9 in any other case; “is concerned primarily with efficiency, and should not be applied when the  
 10 evidence on remand is substantially different, when the controlling law has changed, or when  
 11 applying the doctrine would be unjust.” *Id.* The Commissioner’s argument is unavailing  
 12 because the evidence on remand significantly exceeds the record the ALJ evaluated in the 2019  
 13 decision.<sup>3</sup> *Compare e.g.*, AR 428, 574, 708, 736, 772, 791, 832, 842, 847, 854, 875 (relevant  
 14 prior records), *with e.g.*, AR 1343, 1354, 1550, 1569, 1572, 1781, 2072, 2074, 2075, 2079, 2084,  
 15 2086, 2090, 2091, 2094, 2095, 2232, 2234, 2250, 2266, 2307, 2746, 3071, 3074, 3286, 3777,  
 16 4373, 4417, 4958, 5034, 5039 (additional relevant evidence from consolidated application); *see also*  
 17 *Camarena v. Saul*, 2021 WL 5905720 (9th Cir. Dec. 14, 2021) (precluding application of  
 18 the law of the case doctrine where Plaintiff filed a subsequent claim that was consolidated on  
 19 remand because the ALJ considered additional evidence on remand). The Court thus turns to the  
 20 remaining challenges with the ALJ’s step two findings.

21                   At step two, Plaintiff has the burden to show that (1) she has a medically determinable  
 22 impairment, and (2) the impairment is severe. *Bowen v. Yuckert*, 482 U.S. 137, 146, 107 S.Ct.  
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<sup>3</sup> Plaintiff submitted applications for SSI and DIB in 2020, which were consolidated with the case on remand before the ALJ in 2023. AR 1159-68.

1 2287, 96 L.Ed.2d 119 (1987). The step two inquiry is a “de minimis screening device to dispose  
 2 of groundless claims.” *Smolen v. Chater*, 80 F.3d 1273, 1290 (9th Cir. 1996). An impairment is  
 3 “not severe” if the evidence establishes the impairment is a slight abnormality that has no more  
 4 than a minimal effect on an individual’s ability to work. *Id.* The Ninth Circuit has consistently  
 5 held that an ALJ’s error in finding a claimant’s impairment is not severe at step two is harmless if  
 6 the ALJ considers the resulting limitations later in the process. *See Lewis v. Astrue*, 498 F.3d  
 7 909, 911 (9th Cir. 2007); *Burch v. Barnhart*, 400 F.3d 676, 683–84 (9th Cir. 2005).

8 In this case, the ALJ recognized Plaintiff’s severe impairments, including hypothyroidism  
 9 status post thyroid cancer surgery; neuropathy; cervical and lumbar degenerative disk disease;  
 10 obesity; and depressive disorder. AR 911. However, the ALJ overlooked substantial evidence  
 11 of Plaintiff’s other impairments, including POTS, chronic fatigue, and fibromyalgia and failed to  
 12 consider how the combination of those impairments affected her ability to do basic work  
 13 activities. The ALJ explained Plaintiff’s POTS, chronic fatigue, and fibromyalgia were not  
 14 severe impairments because she “reported symptoms only intermittently,” her symptoms were  
 15 “stable and controlled,” and “her clinical presentation was typically normal, with little to no  
 16 clinical evidence of fatigue, dizziness, or balance problem[s] indicative of deficits in mental or  
 17 musculoskeletal function.” AR 911.

18 In contrast to the ALJ’s findings, the objective evidence in the record established that  
 19 Plaintiff experienced lightheadedness and dizziness (AR 832, 847, 854, 1550, 1572, 2072, 2075,  
 20 2079, 2084, 2086, 2090, 2095, 2232, 2746, 3286); gastrointestinal symptoms (AR 847, 875,  
 21 1343, 2072, 2084, 2090, 2094, 2746, 4958, 5034, 5039); fatigue and insomnia (AR 428, 574,  
 22 708, 736, 842, 847, 854, 1781, 2074, 2084, 2090, 2094, 2232, 2746, 3071, 3074, 4417);  
 23 cognitive issues, including brain fog and memory loss (AR 428, 574, 736, 842, 854, 1354, 2072,

1 2091, 2095, 2250, 2266, 2746, 3777, 4373); and widespread chronic pain (AR 708, 772, 791,  
2 842, 854, 1343, 1569, 2072, 2074, 2084, 2090, 2234, 2307, 2746, 5034, 5039). Those symptoms  
3 inhibited her ability to do basic work activities without becoming fatigued or dizzy and  
4 experiencing cognitive issues; or experiencing pain flareups which would require her to take  
5 more breaks, leave work early, and/or miss work altogether. She testified she could not walk a  
6 mile without multiple breaks; she needed to elevate her feet regularly; her concentration suffered  
7 when she was tired or in pain; it took a half hour for her to clear her brain fog and leave bed in  
8 the morning; and she had issues being in a stagnant position or sitting for very long. AR 944-50.  
9 She also reported that she lost her previous job because of these limitations. AR 1021, 1259,  
10 3776, 3782.

11 This evidence establishes that the combination of Plaintiff's impairments is more than a  
12 "slight abnormality" and has more than a "minimal effect on her ability to do work," which is all  
13 she needed to prove to establish severity at step two. Thus, the ALJ's finding that the  
14 combination of Plaintiff's other impairments was "not severe" is not supported by substantial  
15 evidence. The Commissioner's argument that Plaintiff has not established prejudicial error  
16 because the ALJ "expressly considered" her symptoms is unavailing. Dkt. 10 at 6 (citing AR  
17 915-16). The ALJ summarized Plaintiff's reported symptoms and dismissed them with a generic  
18 statement that "the claimant's statements concerning the intensity, persistence, and limiting  
19 effects of these symptoms are not entirely consistent" with the longitudinal record. AR 916.  
20 This is not a legally sufficient reason to discredit Plaintiff's testimony. *See Treichler v. Comm'r  
21 of Soc. Sec. Admin.*, 775 F.3d 1090, 1102-03 (9th Cir. 2014). Consequently, the ALJ failed to  
22 consider how the combination of her other impairments – and resulting incapacitating fatigue,  
23 cognitive impairment, and aggravated pain – affected her ability to perform work activities.

1                   **B. The ALJ Erred in Adverse Credibility Findings**

2                   The Commissioner argues that Plaintiff waived the right to challenge the ALJ's step two  
 3 findings and evaluation of medical opinions as related to her credibility by not raising it in her  
 4 opening brief, despite her argument relying heavily on her subjective reports. Dkt. 10 at 4, 6, 10-  
 5 11, 17. Plaintiff contends that she does challenge the ALJ's credibility assessment in the second  
 6 step of the sequential evaluation process, highlighting that this is a de minimis test that typically  
 7 precedes the ALJ's credibility evaluation. Dkt. 8 at 3-4, 12; *see also* Dkt. 11 at 3. The Court  
 8 agrees. Moreover, here, the ALJ's credibility conclusions are closely linked with the other issues  
 9 that Plaintiff explicitly raised, allowing the Court to consider the matter as it relates to the ALJ's  
 10 step two and medical evidence findings. *See Albertson v. Berryhill*, 723 F. App'x 511 (9th Cir.  
 11 2018) (Ninth Circuit reached credibility findings despite plaintiff's failure to raise the issue on  
 12 appeal, noting credibility was inherently tied to an issue plaintiff properly raised); *see also Beatty*  
 13 *v. Colving*, 2016 WL 4528960, at \*4 (D. Nev. Aug. 29, 2016) (reversing ALJ where plaintiff did  
 14 not challenge credibility findings and the ALJ failed to provide clear and convincing reasons to  
 15 discount claimant's testimony).

16                   To assess a claimant's credibility, the ALJ must follow a two-step analysis. First, the  
 17 ALJ must determine whether there is objective medical evidence of an underlying impairment  
 18 which could reasonably be expected to produce the alleged symptoms. *Molina*, 674 F.3d at  
 19 1112-13. If such evidence is presented and there is no evidence of malingering, then the ALJ  
 20 must give specific, clear, and convincing reasons for rejecting claimant's testimony about the  
 21 severity of her symptoms. *Id.*

22                   The Ninth Circuit has ruled that a claimant does not need to prove their impairment could  
 23 cause the severity of their symptoms, but only that it could cause some degree of the symptom.

1 *Garrison v. Colvin*, 759 F.3d 995, 1015 (9th Cir. 2014) (quotations and internal citations  
 2 omitted). Nor must a claimant provide objective medical evidence of the pain or fatigue itself, or  
 3 its severity. *Id.* Unless the ALJ finds evidence of malingering, they can only deem a claimant  
 4 not credible by making specific credibility findings and stating clear and convincing reasons for  
 5 each. *Smolen*, 80 F.3d at 1281; *see also Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 883 (9th  
 6 Cir. 2006). This is not an easy requirement to meet: “[t]he clear and convincing standard is the  
 7 most demanding required in Social Security cases.” *Garrison*, 759 F.3d at 1015 (citing *Moore v.*  
 8 *Comm'r of Soc. Sec. Admin.*, 278 F.3d 920, 924 (9th Cir. 2002)).

9 In this case, the ALJ failed to properly consider Plaintiff’s impairments of POTS, chronic  
 10 fatigue, and fibromyalgia at step two, making the application of the first prong of the two-step  
 11 test erroneous. As to the second prong, the ALJ did not find evidence of malingering and  
 12 determined that Plaintiff’s statements were “not entirely consistent” with her reports to medical  
 13 providers, unremarkable clinical exam findings, conservative treatment, and activities. AR 916-  
 14 20. However, as explained *infra*, the ALJ’s characterization of the record and Plaintiff’s  
 15 activities was also erroneous and thus does not constitute clear and convincing evidence that  
 16 Plaintiff’s testimony should not be credited. *See C(4)-(5)*. This is consistent with the legal  
 17 standard in the Ninth Circuit requiring the ALJ to provide clear and convincing evidence to  
 18 discount a claimant’s testimony. *See Garrison*, 759 F.3d at 1015. Because of the ALJ’s failure  
 19 to apply the proper standard of proof before discrediting Plaintiff’s testimony at step two, the  
 20 Court finds that the ALJ committed reversible legal error in its adverse credibility determination.

21 **C. The ALJ Erred in Evaluating Medical Opinions**

22 Plaintiff contends the ALJ erred by discounting the opinions of treating provider Dr.  
 23 Parrish and examining provider Dr. Ronning and giving “great weight” to the opinion of

1 non-examining provider Dr. Stuart. Dkt. 8 at 8-16. The Commissioner argues the ALJ  
 2 reasonably rejected the opinions for specific and legitimate reasons. Dkt. 10 at 6-13.

3 Because Plaintiff applied for benefits before March 27, 2017, prior regulations apply to  
 4 the ALJ's evaluation of medical opinion evidence.<sup>4</sup> Under the applicable regulations, where not  
 5 contradicted by another doctor, a treating doctor's opinion may be rejected only for "clear and  
 6 convincing" reasons. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1996) (citation omitted).  
 7 Where contradicted, a treating doctor's opinion may not be rejected without "'specific and  
 8 legitimate reasons' supported by substantial evidence in the record for so doing." *Id.* at 830-31.

9       1.     *Treating Provider – Rebecca Parrish, M.D.*

10       In March 2023, Dr. Parrish provided an opinion evaluating Plaintiff's functional  
 11 limitations. AR 5293-99. Dr. Parrish opined her diagnoses of cervical spondylosis, chronic low  
 12 back pain, and small fiber neuropathy caused significant limitations, which were ongoing and  
 13 would last at least twelve months. AR 5293, 5297. Dr. Parrish indicated: (1) she could sit only  
 14 three hours in an eight hour workday, could stand or walk a total of thirty minutes during a  
 15 workday, and could occasionally lift or carry no more than ten pounds (2) the degenerative  
 16 changes in her cervical spine caused marked limitations in both her upper extremities with  
 17 grasping, fingering, and overhead reaching within a work environment; (3) her limitations  
 18 precluded her ability to push, pull, kneel, bend, or stoop on a sustained basis; (4) she could not  
 19 tolerate any level of stress because of her chronic neck and lumbar pain, and chronic tingling in  
 20 her feet; (5) her symptoms would likely increase in a competitive work environment; (6) she  
 21 required four unscheduled fifteen-minute breaks per workday; and (7) she would miss at least

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<sup>4</sup> If a claimant submits two applications for benefits - one before the regulations were changed and one  
 after - and the second application is merged with the first one (as in this case), the determinative date is  
 the first application's filing date, not the onset date. *See* 20 C.F.R. §§ 404.1520c, 416.920c.

1 three workdays per month. AR 5295-98. Dr. Parrish provided context about the length of her  
2 relationship as Plaintiff's treating provider and referenced objective medical evidence which  
3 supported her opinion. AR 5293-94 (referencing February 2020 cervical spine MRI  
4 (AR 1363-64); July 2020 cervical spine imaging (AR 1507-15); April 2022 lumbar MRI  
5 (AR 3944-52); and November 2017 skin biopsy for small fiber neuropathy (AR 1784-85, 1798,  
6 1805, 1811).

7                   2.     *Examining Provider – Arnold Ronning, M.D.*

8                   In July 2021, Dr. Ronning performed a physical examination and provided an evaluation  
9 of Plaintiff's functional limitations. AR 2227-36. Dr. Ronning indicated: (1) she could only  
10 walk or stand for four hours in an eight hour day, but not greater than twenty minutes walking  
11 and thirty minutes standing; (2) she could sit for six hours in an eight hour day, but not longer  
12 than thirty minutes; (3) she could not lift or carry with her left arm, but could occasionally carry  
13 up to ten pounds – and rarely up to twenty pounds – with her right arm; and (4) heavier and  
14 sustained lifting would irritate her symptoms. AR 2235-36. Dr. Ronning's opinion included a  
15 detailed summary of Plaintiff's medical history and physical observations which supported his  
16 opinion: Plaintiff had reduced range of motion in her neck and left arm; diminished sensation in  
17 some of her toes; and five tender fibromyalgia trigger points. AR 2234.

18                   3.     *Non-Examining Consultant – Robert Stuart, M.D.*

19                   In September 2021, Dr. Stuart reviewed the medical record and provided a "Physical  
20 Residual Functional Capacity" form which evaluated Plaintiff's limitations. AR 1021-22,  
21 1033-34. Dr. Stuart indicated: (1) she could occasionally lift and/or carry twenty pounds and  
22 frequently lift and/or carry ten pounds; (2) she could sit or stand and/or walk for six hours in an  
23 eight-hour workday; (3) she could never climb ladders, ropes, or scaffolds – but was otherwise

1 unrestricted by postural limitations; and (4) she had no manipulative limitations. AR 1021-22.  
 2 Dr. Stuart's opinion included a brief explanation which broadly referenced inconsistencies with  
 3 the record. AR 1022.

4           4.     *Inconsistencies with the Record*

5           The ALJ gave "little weight" to Dr. Parrish's opinion, finding the opinion overly relied  
 6 on Plaintiff's reports of back pain and lower extremity pain in evaluating her limitations, which  
 7 were "not consistent with the longitudinal record." AR 921. The ALJ found Dr. Ronning's  
 8 opinion merited "little weight" for the same reasons. AR 923. As explained *infra*, substantial  
 9 support does not support the ALJ's findings.

10           The ALJ cited treatment notes and explained they showed Plaintiff's lower extremity  
 11 pain improved and symptoms stabilized with conservative treatment. AR 921 (citing AR 1526,  
 12 1533, 1538 (pain improved with treatment); 1330, 1503 (symptoms stable with treatment)); *see*  
 13 also AR 923 (discounting Dr. Ronning's opinion for same reasons). In contrast to the ALJ's  
 14 finding, however, treatment notes report Plaintiff experienced "ongoing symptoms," her pain  
 15 medication was the "only thing that really helps [her, and] allows her to sleep" (AR 1533, 1538),  
 16 and although her "pain is stable" she has "ongoing burning [pain] on [the left] side of her neck."  
 17 AR 1526. These notes indicate she dealt with ongoing pain, which conservative treatment did  
 18 not improve and for which pain medication was the only way she could sleep. As to Plaintiff's  
 19 allegedly stable symptoms, the ALJ provided one record indicating her "thyroglobulin has been  
 20 unremarkable and ultrasounds have been stable," which is unrelated to any of her alleged  
 21 limiting lower extremity symptoms (AR 1330); and a second which reported her "foot pain [,  
 22 lightheadedness and POTS is stable" without any discussion of non-foot related lower extremity  
 23 symptoms. AR 1503. Substantial evidence does not support the ALJ's findings.

1       The ALJ found Plaintiff's back pain improved with conservative treatment, consisting  
2 primarily of physical therapy. AR 921 (citing AR 5136, 5145, 5153, 5155, 5160-61); *see also*  
3 AR 923 (discounting Dr. Ronning's opinion for same reasons). The treatment notes show  
4 Plaintiff "responded well to [exams] today, with reduced pain symptoms" but had difficulty  
5 flexing her spine or tolerating general activity. AR 5136; *See also* AR 5145, 5153, 5155 (same).  
6 Plaintiff's discharge summary further indicates she reached only forty percent of her stated goals  
7 for resolving issues with her lower extremity tightness and failed to make any progress resolving  
8 her lumbar spine symptoms. AR 5160-61. The record thus reflects that conservative treatment  
9 and physical therapy were unable to resolve Plaintiff's back pain, in contrast to the ALJ's  
10 findings.

11       The ALJ found Plaintiff's "largely unremarkable" clinical presentation, specifically her  
12 "normal gait and normal lower extremity strength, balance, coordination, reflexes, and muscle  
13 bulk/tone," inconsistent with Dr. Parrish's opinion. AR 921; *see also* AR 923 (discounting Dr.  
14 Ronning's opinion for same reasons). The cited records, which report "degenerative changes at  
15 multiple levels" and "moderately severe root entry and foraminal stenosis" (AR 1511-12);  
16 anxious mood, behavior and affect (AR 2086); physical therapy ineffective (AR 2286); and  
17 indicate pain medications and activity modification have "not provided ongoing relief" for neck  
18 and lumbar pain (AR 4922-24); do not provide substantial evidence for the ALJ's findings, and  
19 in fact contradict it. Moreover, the ALJ cited records including Dr. Ronning's opinion, which  
20 opined significant limitations for Plaintiff (AR 2228-36), and a note which reported no "evidence  
21 of hardware complication" in Plaintiff's disk replacement. AR 2374. An ALJ may not reject  
22 evidence based on an inaccurate portrayal of the record. *Reddick v. Chater*, 157 F.3d 715,  
23 722-23 (9th Cir. 1998) (ALJ's decision unsupported by substantial evidence where "paraphrasing

1 of record material is not entirely accurate regarding the content or tone of the record.”). It is true  
2 that the ALJ cited some records showing normal mental exam and gait findings (AR 1331, 1505,  
3 1538-49, 1559-60, 2706-08, 3041, 4071-76, 4372, 4421, 5017-18, 5037), but such observations  
4 must be “read in context of the overall diagnostic picture” the provider draws. *Ghanim v.*  
5 *Colvin*, 763 F.3d 1154, 1162 (9th Cir. 2014). The fact that a person has “occasional  
6 symptom-free periods” is not inconsistent with finding that the person is too disabled to function  
7 in the workplace. *Lester*, 81 F.3d at 833.

8 The ALJ also found Plaintiff’s level of activity – namely her testimony that she could  
9 walk one mile – inconsistent with the severity of limitations Dr. Parrish opined. AR 921; *see*  
10 *also* AR 923 (discounting Dr. Ronning’s opinion for same reasons). As before, the ALJ’s  
11 description of the record is not entirely accurate. Plaintiff testified her “small fiber neuropathy”  
12 caused “difficulty in walking” and made her legs swell up and feet go numb. AR 944. She  
13 explained she randomly experienced painful “pins and needles,” and clarified the furthest she  
14 could walk was “probably” a mile with “breaks along the way.” AR 944. That Plaintiff could  
15 *probably* walk one mile, with multiple breaks and no limitations, is not inconsistent with Dr.  
16 Parrish’s opinion that Plaintiff could only stand or walk a total of thirty minutes in a workday.  
17 Nor is it inconsistent with the other limitations Dr. Parrish or Dr. Ronning assessed.

18 Finally, the ALJ found Dr. Parrish’s assessment of severe limitations due to neck and  
19 upper extremity pain inconsistent with Plaintiff’s “ongoing improvement.” AR 921; *see also*  
20 AR 923 (discounting Dr. Ronning’s opinion for same reasons). The ALJ explained that  
21 Plaintiff’s neck and upper extremity symptoms “largely resolved after her June 2021 cervical  
22 spine surgery,” and “after a short course of post-surgical physical therapy,” she “exhibited  
23 normal strength, coordination, and range of motion in the upper extremities.” AR 921 (citing

1 AR 4066-76). Moreover, “by September 2021, her symptoms had largely resolved” and her  
2 “clinical examination was largely unremarkable, reflecting normal neck range of motion and  
3 normal upper extremity strength and sensation.” AR 921 (citing AR 2368-69). The ALJ’s  
4 summary of these records are not supported by substantial evidence. The normal findings the  
5 ALJ relied on from June 2021 relate to whether Plaintiff could be discharged home.

6 AR 4066-76. The notes show that Plaintiff transferred herself from a bed to a chair, walked four  
7 hundred feet, and used twelve stairs with a handrail, but do not help explain her physical  
8 limitations in a competitive work environment. AR 4075. Similarly, although progress notes  
9 from September 2021 reflect some normal findings and improvement in Plaintiff’s upper  
10 extremities, her provider reported significant concern with her “low back and intermittent right  
11 lower extremity pain that has been ongoing for 30 years” and indicated her pain was aggravated  
12 by sitting. AR 2368. These records are not inconsistent with the medical opinions.

13 An ALJ may reject a medical opinion that is contradicted by objective evidence in the  
14 medical record. *Ford v. Saul*, 950 F.3d 1141, 1156 (9th Cir. 2020). In this case, however,  
15 Plaintiff’s primary treating doctor addressed why largely unremarkable clinical findings did not  
16 contradict opinions of severe limitations. As Dr. Parrish explained, Plaintiff’s chronic neck and  
17 lumbar pain, and chronic tingling in her feet, prevented her from tolerating even low stress; her  
18 symptoms would flare up in a work environment; and her degenerative spine issues caused  
19 marked limitations in her upper extremities. Dr. Parrish also indicated Plaintiff’s issues had no  
20 connection with emotional factors and that she was not a malingeringer. AR 5298. The ALJ did not  
21 address Dr. Parrish’s explanations or explain why the doctor’s interpretation of the medical  
22 record was incorrect. It is insufficient for an ALJ to simply disagree with a doctor. *Reddick*, 157

1 F.3d at 725 (“The ALJ must do more than offer his conclusions. He must set forth his own  
2 interpretations and explain why they, rather than the doctors’, are correct.”).

3       5.     *Insufficient Support in the Record*

4       The ALJ explained that while Dr. Parrish supported her opinion with imaging results,  
5 “the only other support she provided was her recitation of the [Plaintiff’s] subjective pain  
6 report.” AR 921. The ALJ found this “insufficient to support the rather profound limitations  
7 [she] assessed.” AR 921. In evaluating Dr. Parrish’s opinion for supportability, the ALJ  
8 committed a variety of important errors. To start, the ALJ entirely ignored most of Dr. Parrish’s  
9 extensive treatment records, including countless reports from other attending providers, dozens  
10 of medical test results, and Dr. Parrish’s own treatment notes. *See e.g.*, AR 1318-2190,  
11 2270-2880, 2913-3395, 3930-5121. The ALJ failed to recognize the opinion was based on Dr.  
12 Parrish’s significant years of experience treating Plaintiff and objective medical records and was  
13 entitled to more weight than an otherwise unsupported form would merit. The ALJ also failed to  
14 compare Dr. Parrish’s records to other medical evidence and thus failed to recognize that no  
15 other treating or examining physician disagreed with Dr. Parrish’s findings. Notably, Dr. Stuart,  
16 the non-examining consultant whose views differed from the treating and examining doctors’,  
17 lacked access to Plaintiff’s full treatment records and wrote his report in September 2021, which  
18 was several years before Dr. Parrish provided her opinion. In the same way, the ALJ failed to  
19 evaluate Dr. Parrish’s records for internal consistency or inconsistency in her description of  
20 Plaintiff’s symptoms, an evaluation that would have unearthed consistent reports of chronic pain  
21 and numbness radiating from her back and neck into her extremities and causing her significant  
22 limitations. Finally, the ALJ failed to afford the deference to which Dr. Parrish was entitled as  
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1 Plaintiff's treating physician, and generally mischaracterized the record in evaluating the medical  
2 evidence for consistency.

3 As to the supportability of Dr. Ronning's opinion, the ALJ explained the attribution of  
4 various limitations due to diagnoses of back pain, neck pain, lower extremity neuropathy, and  
5 POTS syndrome lacked objective support in the record and were taken out of the context that  
6 Plaintiff was recovering from surgery at the time. AR 922-23. In pertinent part, the ALJ found  
7 "Dr. Ronning did not record objective finding[s] to establish a diagnosis of POTS" (AR 922), but  
8 otherwise failed to contest the support for limitations attributed to Plaintiff's diagnoses of back  
9 pain, neck pain, and lower extremity neuropathy. AR 923. The ALJ dismissed Plaintiff's  
10 alleged limitations from these symptoms solely because they were inconsistent with the record,  
11 which as explained *supra*, was error. Moreover, Dr. Ronning supported his opinion with a  
12 detailed discussion of Plaintiff's medical history and his physical observations during exam.  
13 AR 2234. It is true Dr. Ronning's opinion occurred while Plaintiff was recovering from surgery,  
14 which he addressed in the opinion, but this is not a valid reason for discounting the support he  
15 provided. AR 2235.

16 In sum, the ALJ failed to give specific, clear, and convincing reasons for rejecting the  
17 medical opinions provided by Plaintiff's treating provider, Dr. Parrish, or examining provider,  
18 Dr. Ronning. In fact, the reasons given by the ALJ – Plaintiff's doctors overly relied on her  
19 self-reports, she had minimal limitations, and her clinical findings were normal – are plainly  
20 belied by the record and rest upon mischaracterizations of the doctors' opinions. Because the  
21 ALJ provided no valid reason supported by substantial evidence to discount the doctors'  
22 opinions, the Court concludes the ALJ erred by discounting them.

1           **D.       Scope of Remand**

2           Plaintiff argues the Court should remand for an award of benefits because the record is  
3 complete and the improperly discounted opinions support a finding of disability. Dkt. 8 at 18.  
4 The Commissioner contends that even if the ALJ erred, the record has outstanding conflicts  
5 which warrant remand. Dkt. 10 at 17-18.

6           Remand for an award of benefits “is a rare and prophylactic exception to the  
7 well-established ordinary remand rule.” *Leon v. Berryhill*, 880 F.3d 1041, 1044 (9th Cir. 2017).  
8 The Ninth Circuit has established a three-step framework for deciding whether a case may be  
9 remanded for an award of benefits: (1) has the record been fully developed such that further  
10 administrative proceedings would serve no useful purpose; (2) has the ALJ failed to provide  
11 legally sufficient reasons for rejecting evidence from plaintiff’s testimony or medical opinions;  
12 and (3) if the improperly discredited evidence were credited as true, would the ALJ be required  
13 to find plaintiff disabled on remand. *Garrison* at 759 F.3d 1020.

14           The Court concludes that each of the credit as true factors is satisfied and thus that  
15 remand for the calculation and award of benefits is warranted. First, there is no need to develop  
16 the record or convene further administrative proceedings. Two administrative judges conducted  
17 hearings and the record is complete. It totals thousands of pages and includes treatment notes  
18 documenting dozens of doctors’ visits addressing Plaintiff’s medical conditions within the  
19 relevant period. The record also reflects Plaintiff’s testimony before the ALJ and her responses  
20 to numerous questionnaires about her physical and mental limitations, all of which corroborate  
21 her impairments. Dr. Parrish’s opinion is developed and substantiated by her long-term  
22 treatment relationship with Plaintiff and the VE specifically testified regarding the inability of an  
23 individual with Plaintiff’s limitations as described by Dr. Parrish to sustain work.

1       Although the Commissioner argues further proceedings would serve the purpose of  
2 allowing the ALJ to revisit the medical opinions he rejected for legally insufficient reasons (Dkt.  
3 10 at 18), our precedent and the objectives of the credit-as-true rule preclude the argument that a  
4 remand for the purposes of allowing the ALJ to have a second – or in this case third – chance  
5 qualifies as a remand for “useful purpose” under the first part of credit-as-true analysis. *See*  
6 *Benecke v. Barnhart*, 379 F.3d 587, 595 (9th Cir. 2004) (“Allowing the Commissioner to decide  
7 the issue again would create an unfair ‘heads we win; tails, let’s play again’ system of disability  
8 benefits adjudication.”); *Moisa v. Barnhart*, 367 F.3d 882, 887 (9th Cir. 2004) (“The  
9 Commissioner, having lost this appeal, should not have another opportunity to show [Plaintiff] is  
10 not credible any more than [Plaintiff], had he lost, should have an opportunity for remand and  
11 further proceedings to establish his credibility.” (citation omitted)). Allowing remand for further  
12 proceedings because the ALJ failed to provide any legally sufficient reasons for discounting  
13 evidence would contribute to waste and disincentivize the ALJ’s obligation. This is the essence  
14 of the “heads we win; tails, let’s play again” adjudication *Benecke* cautioned against. 379 F.3d at  
15 595.

16       The other two prongs of the *Garrison* test are also satisfied. The ALJ gave “great  
17 weight” to Dr. Stuart’s September 2021 opinion and explained it was the “most comprehensive  
18 review of the evidence,” and “well supported because the consultants are familiar with Social  
19 Security disability criteria, they reviewed the record, and they pointed to evidence of record to  
20 substantiate their opinions.” AR 920; *see also* AR 923 (finding Dr. Stuart provided “more  
21 reliable assessment” than that provided by examining provider Dr. Ronning). Dr. Stuart’s  
22 opinion conflicts with Dr. Parrish’s opinion that Plaintiff’s physical impairments were disabling  
23 and she was unable to work without significant accommodations. AR 5293-99. Regulations and

1 case law applicable to Plaintiff's application require treating physicians' opinion be given greater  
2 weight than non-examining doctors' opinions. *Garrison*, 759 F.3d at 1012 ("[T]he opinion of a  
3 treating physician is . . . entitled to greater weight than that of an examining physician, [and] the  
4 opinion of an examining physician is entitled to greater weight than that of a non-examining  
5 physician."). The ALJ failed to follow the appropriate methodology for weighing a treating  
6 physician's medical opinion, and there is no legitimate reason provided for rejecting Dr.  
7 Parrish's opinions. If credited as true, Dr. Parrish's opinion establishes Plaintiff is disabled.

8 The Vocational Expert ("VE") testified if Plaintiff could not consistently complete an  
9 eight-hour day, required four additional unscheduled fifteen-minute breaks during a workday; or  
10 would miss up to three days of work a month, she would be precluded from employment based  
11 on the ALJ's RFC assessment. AR at 955-56. The Commissioner argues "the unchallenged  
12 reasons provided by the ALJ for discounting [Plaintiff's] subjective complaints] also forecloses  
13 [her] preferred remedy", but this is unavailing. Dkt. 10 at 18 (citing *Dominguez v. Colvin* 808  
14 F.3d 403, 409 (9th Cir. 2015)). In *Dominguez*, the Ninth Circuit remanded for further  
15 proceedings because: (1) the treating doctor's opinions were in conflict with his treating notes  
16 and several examining providers opinions; (2) the ALJ made a valid adverse credibility  
17 determination, which was supported by skepticism from providers towards the plaintiff's claims;  
18 and (3) there were several outstanding factual issues and gaps in the record for the ALJ to  
19 resolve. *Id.* at 406-10. In contrast, in this case, Dr. Parrish's opinions and treatment notes are  
20 internally consistent with her observations and with those of other examining providers; Dr.  
21 Parrish reported she was not skeptical of Plaintiff's complaints; and the record is complete.  
22 Accordingly, no material conflict remains to be resolved. Because Dr. Parrish's opinion outlined  
23

1 physical limitations which prevent Plaintiff from doing any full-time work, she is entitled to  
 2 benefits. *Trevizo v. Berryhill*, 871 F.3d 664, 677 (9th Cir. 2017).

3 Finally, there is not “serious doubt” based on “an evaluation of the record as a whole”  
 4 that Plaintiff is, in fact, disabled, given her severe impairments of hypothyroidism status post  
 5 thyroid cancer surgery; neuropathy; cervical and lumbar degenerative disk disease; obesity; and  
 6 depressive disorder; the combination of other conditions from which she suffers, including  
 7 POTS, chronic fatigue, and fibromyalgia; and her lack of transferable work skills. The Court’s  
 8 conclusion follows directly from the analysis of the ALJ’s errors and the strength of the  
 9 improperly discredited evidence, credited as true: a treating provider and an examining provider  
 10 deemed Plaintiff to be disabled because of an array of severe physical impairments, and a VE  
 11 explicitly testified that a person with the impairments described by Plaintiff’s medical caretakers  
 12 could not work. The Commissioner simply repeats the arguments that have been made, asserting  
 13 evidence from the providers who treated and examined Plaintiff should not be given much  
 14 weight and Plaintiff’s testimony should not be accepted. As before, the Commissioner dwells on  
 15 a handful of records showing slight improvements in Plaintiff’s condition. At no point does the  
 16 Commissioner advance an argument that the ALJ overlooked anything in the record and explain  
 17 how that evidence undercuts Plaintiff’s claim to be disabled. The record reflects that Plaintiff  
 18 has been afflicted with a number of severe physical impairments since the onset date. Even if  
 19 these symptoms have occasionally abated for brief periods of time – while in treatment and  
 20 reducing stressors – the Court, like her numerous medical providers, sees no reason to doubt that  
 21 she has been incapable of work since the amended onset date of disability.

22 In addition, the “exceptional facts” of this case, *Terry v. Sullivan*, 903 F.2d 1273, 1280  
 23 (9th Cir. 1990), strongly favor remand for immediate payment of benefits. Plaintiff is 52 years

1 old and first sought benefits nearly a decade ago; her disability was triggered when she was  
2 exposed to chemicals while working at a print shop in 2013. AR 563, 707. “[F]urther delays at  
3 this point would be unduly burdensome.” *Terry*, 903 F.2d at 1280 (exercising discretion to order  
4 payment of benefits where plaintiff was 64 years old and applied for benefits four years earlier,  
5 despite lack of development in the record about a job plaintiff was allegedly qualified for); *see*  
6 *also Smolen*, 80 F.3d at 1292 (remanding for benefits where plaintiff “already waited over seven  
7 years for her disability determination”); *see also Trevizo*, 871 F.3d at 682 83 (remanding for  
8 benefits where plaintiff was 65, sought benefits seven years prior, and claimed disability ten  
9 years prior, despite some unexplained non-compliance with medication). Further, courts in the  
10 Ninth Circuit have regularly relied on medical opinion evidence to remand for an award of  
11 benefits, even where Plaintiff failed to challenge the ALJ’s credibility findings. *See, e.g.*,  
12 *Fulsaas v. Berryhill*, 2018 WL 2090475 (D. Or. May 4, 2018) (remanding for an immediate  
13 award of benefits despite the fact that plaintiff did not challenge the ALJ’s credibility finding);  
14 *Connie T. v. Berryhill*, 2019 WL 2419461 (D. Or. Jun. 10, 2019) (remanding for an immediate  
15 award of benefits based on medical opinion evidence without reaching the question of plaintiff’s  
16 subjective symptom testimony); *Michael P. v. Berryhill*, 2019 WL 3210096, at \*2 (D. Or. June  
17 27, 2019) (remanding for benefits without reaching question of plaintiff’s credibility). Taking  
18 everything into account, Plaintiff satisfies all three conditions of the credit as true rule and a  
19 careful review of the record discloses no reasons to seriously doubt that she is, in fact, disabled.  
20 Because the evidence establishes Plaintiff would be unable to maintain employment while  
21 managing her pain and physical impairments, remand for further proceedings serves no useful  
22 purpose.

23

## CONCLUSION

For the reasons set forth above, the Commissioner's final decision is **REVERSED** and this case is **REMANDED** for an award of benefits under sentence four of 42 U.S.C. § 405(g).

Dated this 2nd day of May, 2024.

S. Kate Vaughan  
S. KATE VAUGHAN  
United States Magistrate Judge